IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8084 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI CHIMANBHAI PATEL & 2 - Petitioner(s)
Versus
MANSUKHBHAI ALIAS VINUBHAI VINUBHAI LALLUBHAI PATEL & 9 - Respondent(s)

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Appearance :

MRS KETTY A MEHTA for Petitioner(s) : 1 - 3.
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 10.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/04/2007

ORAL JUDGMENT

Defendants no.2, 3 and 4 in Special Civil Suit No.297 of 2003 filed before the learned Civil Judge (SD), Surat for partition are before this Court being

aggrieved by order dated 17.03.2007 (Annexure 'G') passed below Exh.56 by the learned Principal Senior Civil Judge, Surat. It is prayed by the petitioners-original defendants that the learned Judge be directed to hear the application, exh.5 and decide the same as expeditiously as possible before hearing of application, exh.55. The present petition was filed on 22.03.2007. The matter was taken up for hearing on 23.03.2007. This Court (Coram: K.M. Mehta, J.) passed order recording the facts of the case and issuing notice returnable on 05.04.2007 and directed the learned Trial Judge not to pass any order on merits. He clarified that, “It would be open to hear the application, exh.5 without being influenced by the order of this Court.”

2. Notice was served on all the respondents herein, except respondent no.5, who refused to accept process of this Court. The Court issued rule on 16.04.2007 returnable today. It is stated by the learned advocate for petitioners that all the respondents are served except respondent no.5, who has refused to accept process of rule also.

3. Taking into consideration the contents of the application and more particularly, the facts stated in order dated 23.03.2007, it is deemed fit that the Court below be directed to pronounce the order below exh.5, which is kept for judgement as recorded in Rojkam dated 04.04.2007. The Court shall pronounce the judgement on the next date on which the matter is kept, i.e. 27.04.2007. Rule is made absolute. Consequently, the order below exhibit 55 does not survive. The same is quashed and set aside. Direct service is permitted today.

(RAVI R. TRIPATHI, J.)

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